IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 90 of 2002

RAMESHWAR SONI
V/S
ASST. CIT, JODHPUR

Mr. ANJAY KOTHARI, for the appellant / petitioner

Mr. KK BISSA, for the respondent

Date of Order : 17.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This is an assessee's appeal, seeking to challenge the order of the learned ITAT dated 11.5.2002 (Annex.2), partly allowing the appeal against the block assessment, made by the Assessing Officer. A search was undertaken on 5.1.96, and consequent thereupon proceedings were initiated, and vide Annex.1, assessment was made under Section 158BC of the Act, assessing a total undisclosed income of Rs.12,19,481/-, and assessing tax thereon.

The appeal was admitted vide order dated 9.12.2002, by framing four substantial questions of law. First being, as to whether for the purposes of block

assessment under Section 158BC, the computation of undisclosed income can include income of any previous year, which was below taxable limit, but for which no return under Section 139 was filed since there was no obligation under the Act to file return. Then second question is, as to whether the Tribunal has failed to appreciate that the burden of proof lies heavily on the Department to show that undisclosed income belongs to the assessee alone, and none-else, was evident from the seized documents. The third question framed is, as to whether the income from undisclosed source represented through assets acquired by parents of the assessee can be subject matter of block assessment in the hands of assessee, when search was conducted only against the assessee, and not against his parents. The fourth question framed is, as to whether block assessment made by the Assessing Authority, as modified by the Tribunal, can be sustained in view of the amended clause (c) of Sec.158BB of the Act, as inserted by the Finance Act, 2002, w.e.f. 1.7.1995.

so far as the questions No.1 and 4 are concerned, as an abstract legal proposition, they are required to be answered in favour of the assessee, and against the Revenue, to the effect, that for the purpose of block assessment under Section 158BC, computation of undisclosed income cannot include income of any previous year, which was below taxable limit, but for which return was not filed

under Section 139 for the period relating to the date after 1.7.95.

This question has already been decided by this Court, in Income Tax Appeal No.91/2002 "CIT-II Vs. Late Shri Manohar Lal Soni", decided on 23.11.2007, wherein the provisions of Section 158BB(1)(c), as inserted by amendment had been considered, and the above view has been taken.

The question then is, as to whether, in any of the assessment years during block period, there was any income of the assessee, which was below the taxable limits? As we find from the documents produced by the appellant, from page 91 onwards of this appeal that during each of the assessment years, the computation of income as done by the Assessing Officer shows, that for each year, the income was found to be above the taxable limit. Therefore, the question, on the face of it remains only in abstract. However, it was then submitted by learned counsel for the appellant, that the learned Tribunal has deleted certain additions, made by the Assessing Officer, and those deletions would have the effect of bringing down the computation of income of certain assessment years to a level, below taxable limit.

Suffice it to say, that if consequent upon the deletions made by the learned Tribunal, so also consequent

upon the reconsideration of the matters, for which the matter has been remanded by the Tribunal to the Assessing Officer, if the Assessing Officer finds, that the income of the assessee falls below the taxable limit during any particular assessment year, then the income of that assessment year shall not be taken to be a part of the undisclosed income, for the purpose of block assessment. The contrary finding in this regard, recorded by the Tribunal, in para 3 of the impugned judgment (Annex.2), is, to that extent, set aside.

Then remain the questions No.2 and 3. Of course, as abstract legal proposition, may be that the income from undisclosed sources represented through the assets acquired by the parents of the assessee, cannot be subject matter of block assessment in the hands of the assessee, when the search was conducted only against the assessee; but then, we have taken through the entire judgment of the learned Tribunal, so also the Assessing Authority, and what we find is, that the learned Tribunal has gone into the matter threadbare, with respect to each item of the asset, and after considering the material found as a result of all search, and other material and information as were available with the Assessing Officer, also appreciated the stand taken by the assessee, with respect to each item, and with respect to many of the items, the learned Tribunal was satisfied with the explanation and therefore, did order

deletion of those assets, from the assessment of the undisclosed income.

To illustrate, a huge amount of Rs.1,27,170/- and another amount of Rs.90,475/-, representing the gold found in possession of the assessee, has been deleted by the Tribunal, being satisfied with the explanation of the assessee. Likewise, the addition of certain deposits made under RD account, and to some extent, the amounts paid for purchase of LIC etc. have also been deleted. Then so far as the items, which were alleged, or claimed by the assessee, to be acquired from out of the assets of the parents, or having been devolved on him by inheritance, have also all been examined, threadbare, and for good and cogent reasons, the explanation given by the assessee has not been found to be correct or convincing, and regarding some items, it has been found, that the assessee has been taking shifting stands.

What we want to clarify is, that the entire reading of the two orders (Annex.1 and 2) does show, that the findings with respect to each item of the asset, have been arrived at by the learned Tribunal, after thorough appreciation of the material available with it, and in right perspective, and the conclusions of fact, as arrived at, have culminated into the partial acceptance of the appeal vide Annex.2.

That being the position, the brass findings of fact, arrived at by the learned Tribunal, with respect to each of the items of assets, as have been arrived at by the learned Tribunal, disbelieving the assets to have been acquired by the parents, or through the assets of the parents, can hardly be said to give rise any substantial question of law, under Section 260A of the Act, so as to require interference by this court.

So far as the question of burden of proof is concerned, in our view, on the face of the language of Section 158BB, and rather all provisions contained in Chapter XIV-B, we are satisfied, that even from the standpoint of burden of proof, the learned Tribunal has rightly appreciated the evidence of the assessee.

Consequently, the questions No.2 and 3 firstly do not arise, and if they are taken to be arising, they are answered against the assessee.

As a result, the appeal is dismissed, with the clarification, that if consequent upon the deletions made by the learned Tribunal in Annex.2, so also consequent upon the conclusions, to be arrived at by the learned Assessing Officer, pursuant to the remands made by the learned Tribunal vide Annex.2, if the income of the assessee for

any particular assessment year falls below the taxable limits, in that event, the income assessed for those particular assessment years, shall not be included in the undisclosed income of the assessee, for the block assessment period.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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